

MINUTES
WARRICK COUNTY AREA PLAN COMMISSION
Regular meeting held in Commissioners Meeting Room,
Third Floor, Historic Court House,
Boonville, IN
Monday, May 9, 2011, 6:00 PM

PLEDGE OF ALLEGIANCE. A moment of silence was held followed by the Pledge of Allegiance.

MEMBERS PRESENT: Guy Gentry, President; Mike Moesner, Marlin Weisheit, Larry Willis, Judy Writsel and Amanda Bailey.

Also present were Morrie Doll, Attorney, Sherri Rector, Executive Director and Christy Powell, staff.

MEMBERS ABSENT: Brad Overton

MINUTES: Upon a motion made by Marlin Weisheit and seconded by Mike Moesner, the Minutes of the last regular meeting held April 11, 2011, were approved as circulated.

AMENDMENT TO RULES OF PROCEDURE

Mrs. Rector stated in the Board's packets there are two amendments. She stated the first amendment is about continuances. She stated this is what the Board of Zoning Appeals approved in their Rules of Procedure so they are trying to change the Planning Commission Rules of Procedure to where it is the same. She stated basically it says "owner may request a continuance to a regularly scheduled meeting not to exceed a period which would be the next 3 regularly scheduled meetings." She continued "if the request exceeds this total time period they must re-notice adjacent property owners and pay the continuance fee as established." She stated they got into this with the Board of Zoning Appeals on the coal mine application and basically in the existing Rules of Procedure everything has to come back each month. She stated they wanted it to be clear if someone wanted to continue something to a certain meeting but it wasn't in black and white in the procedures so Attorney Doll suggested they make it clear. Mrs. Rector stated currently it states "The Commission may continue any item from one meeting to another. No notice shall be required for the continued consideration of any item except that required by state law." She stated it doesn't give the applicant an opportunity to ask for a continuance if they see they have a problem. She stated for instance the one subdivision Gourley Place that has had a problem getting the deed and going through court. She explained basically this means an item can be continued to 3 meetings past where they are and then anything after that time period, if they would need more time, they would have to re-notice the adjacent property owners and pay the continuance fee as already established by the Board in the Fee Schedule.

The President asked if everyone understood the amendment.

The Board agreed they did.

The President asked if there were any questions by the Board. There being none he entertained a motion.

Larry Willis made a motion to amend the Rules of Procedure 3.8 Continuances.

Amanda Bailey seconded and the motion carried.

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Mrs. Rector stated she had another item to discuss in the Rules of Procedure. She stated it is not specifically laid out how to file a zoning violation complaint nor does it state that they must have one no matter if it is a private citizen, a Board Member or a Commissioner. She stated she made the addition to the Rules of Procedure under Rule 6 and if the Board accepts it they will also have to amend the current Rule 6 that is in here to Rule 7 since it is 'Amendments and Suspensions' and that should be the last item in your Rules of Procedure. She stated there is an example complaint form in the Board's packets that can be obtained from the office or on-line. She stated it must be signed in front of a staff member in the office or notarized. She stated the reason for that is they had people filing complaints on neighbors who were signing other people's names so they had to go to that extent. She stated they do not accept anonymous complaints over the phone or by letter. She stated the Planning Commission does not accept complaints by Planning Commission Board Members or County Commissioners unless accompanied by the complaint form and all complaints are forwarded to the Zoning Inspector for inspection and photographs unless it is determined by the Executive Director that the inspection should be done by the President of the Board or the Director.

The President asked if there were any questions. There being none he entertained a motion.

Mike Moesner made a motion to accept the Rule 6 change (Complaints) and to amend the current Rule 6 to Rule 7.

Larry Willis seconded and the motion carried.

Mrs. Rector stated the Board will have all new sets for the next meeting and she will have the President sign them.

The President explained the Rules of Procedure.

SUBDIVISION FOR PRIMARY PLAT APPROVAL:

PP-11-05 Deer Ridge Lakes Subdivision -by Applicant and Owner: Deer Ridge Lake, LLC, by Allan Holweger, Partner. 159 acres located on the south side of Fisherville Rd. (N 350)

approximately 0 feet east of the intersection formed by Asbury Cemetery Road (W 950) and Fisherville Rd. Campbell Twp. *(Complete legal on file)* Advertised in the Boonville Standard April 28, 2011.

Al Holweger approached the podium.

Jim Biggerstaff approached the podium.

The President called for a staff report.

Mrs. Rector stated they have all the return receipts from certified mail to the adjacent property owners. She stated the subject property and all surrounding property is currently zoned "A" Agriculture Zoning District. She stated there is no flood plain. She stated it is a proposed 8 lot subdivision with 2 Outlots. She continued that Outlot A states it is an existing Haul Road to be used for future development. She stated Outlot B states it is for future development. She stated the lots front on Asbury Cemetery Rd. and Lots 1 and 8 also have frontage on Fisherville Rd. which is to the North. She stated the lots will require driveway permits before an ILP can be issued. She stated the County Commissioners ruled today that no improvements would be required to either Fisherville Rd. or Asbury Cemetery Rd. She stated the Drainage Board approved the subdivision not requiring any drainage plans. She stated there is a sign off from Aaron Franz in the Health Department certifying that the lots meet the requirements for septic systems to be approved, approved soil tests have been done and approved by a Soil Scientist and Septic Sites are approved. She stated the sites will need to be shown and located on the final plat. She stated they have a letter from Elberfeld Water stating they have made application for extension of the water line along the west side of Asbury Cemetery Road to provide water service for Lots 1 through 8. She stated a copy of the contract is included in the Board Member's packets and will need to be approved by the Board per the Subdivision Control Ordinance. She asked the Attorney to review it. She stated normally what the ordinance requires is that they submit a capacity letter and a letter of credit provided for the water company to put in the lines however they also have the option of the developer entering into a contract and in this case it is with the Town of Elberfeld. She stated if that is approved by the Board, the contract can stand instead of them providing a letter of credit for the water installation. She stated it is a proposed residential subdivision and there are a few corrections that need to be made when the final plat is submitted otherwise it is in technical conformity to the Subdivision Control Ordinance.

The President asked if the petitioner had anything to add to the staff report.

Mr. Holweger stated all of the material for the water line is being delivered tomorrow. He stated Bruce Biggerstaff Jr.'s company is going to start either late tomorrow or Thursday and they hope by the first of next week to have the water line in and ready for testing. He stated it would have already been in but they have had weather related problems and couldn't get it in.

The President stated he sees that Outlot B is above the roadway, which he has listed as ‘for future development’.

Mr. Holweger stated they will donate that to the County if they want it.

The President stated he is not speaking on the County’s behalf whether they want that strip or not. He continued that Outlot A is the access and utility easement and asked if it is just that strip.

Mr. Biggerstaff stated most of that property around it is owned by the coal company and it is kind of an access to get in and out of there he guesses. He stated it is utility and roadway.

Mrs. Rector stated for Mr. Holweger to make sure that water line goes where that easement is shown along the road.

Mr. Biggerstaff stated the water line is going to be laid on the west side Asbury Cemetery Rd.

Mrs. Rector stated so they are not going to put it in the utility easement on their side.

Mr. Holweger stated the Town of Elberfeld is going to bore under the road.

Mr. Biggerstaff stated it starts from the fire hydrant on Asbury Cemetery Rd. and Fisherville Rd. and that is where they are starting. He stated it is already on that side so they are just going to run it on that side.

There was some discussion on the location of the outlots.

Mr. Holweger stated he will donate that Outlot A to anyone who wants it.

The President asked if there were any questions by Board Members. There being none he asked for any remonstrators. There being none he entertained a motion.

Marlin Weisheit made a motion to approve PP-11-05 Deer Ridge Lakes Subdivision.

Larry Willis seconded and the motion carried.

OTHER BUSINESS:

Complaint: Re-inspection of Cathy Emmerson, 110 E. First St. Lynnville, Lot 22 & 23 in the Town of Lynnville ~ Alleged junk/salvage yard in an “R-1A” Single Family Dwelling Zoning District.

Cathy Emmerson approached the podium.

Marcus Emmerson approached the podium.

The President asked for a staff report.

Mrs. Rector stated the Board should have the staff report from two meetings ago so she will just start with March 14th. She stated this Board gave Mrs. Emmerson and Marcus, her son, 60 days until the May meeting to clean the property up. She stated the Zoning Inspector performed an inspection and submitted photographs and a report stating “property has been cleaned up quite a bit and all the junk cars are gone.” She stated she has to say to Mr. Emmerson that he did a great job.

Mr. Emmerson stated he kept his word and he’s not done.

Mrs. Rector stated she didn’t see many items they have left to clean up.

Mr. Emmerson stated the ditch is going to take some doing. He stated he is going to try and burn it down in small sections and get it down to the bare minimum. He stated it’s been let go for a year or two and it’s a nightmare. He stated then all the flower beds are going to be re-done.

Mrs. Rector stated it is a very nice house once they cleaned it up.

Mr. Emmerson stated it looked like that for 15-16 years and they kept it that way.

Commissioner Weisheit stated he noticed this weekend how nice it looked.

Mr. Emmerson stated he had been weed eating all day and he knocked it down good last week but it’s already ready to be mowed again.

Commissioner Weisheit stated yes this wet weather.

President Gentry asked if the Board had any questions and if not he would entertain a motion to move they are no longer non-compliant.

Mike Moesner stated he would move that they have fulfilled their requirements and are no longer in violation and he would like to commend them on a job well done.

Commissioner Weisheit seconded and the motion carried.

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Complaint: Re-inspection of James & Janet Wolfe, 5066 Jamestown Drive, Newburgh, IN. Lot 18 Heritage Place Subdivision ~ Alleged junk/salvage yard in an “R-1A” Single Family Dwelling Zoning District.

Anthony Wolfe approached the podium.

James Wolfe approached the podium.

The President asked for a staff report.

Mrs. Rector stated the Board has the staff report from last month. She stated the Board ruled to give the Wolfe's until May 5th to plate the car and clean up the yard. She stated she did an inspection on May 6, 2011. She stated she found a lot has been cleaned up but a lot is still there. She stated as the Board can see in Picture #23, the vehicle is still not plated. She stated she phoned Anthony and Janet Wolfe and informed them they needed to be at this meeting. She stated they did state part of their problem in getting it cleaned up was all the rain. She stated the front yard looks good, looks like they got most everything out of the front yard.

James Wolfe stated Anthony Wolfe did a good job; he did just about all the work.

Mrs. Rector stated she went out there between 7:30 and 8:00 the other morning.

James Wolfe stated Anthony Wolfe is going to take that car down to Georgia on the 19th.

President Gentry asked if he is hauling it back or driving it back.

Anthony Wolfe stated he is going to put it on a tow dolly.

The President asked what the plans are for the stuff in the backyard.

Anthony Wolfe stated there are a couple of push mowers and a couple of riding mowers.

James Wolfe stated they are going to have everything put away so it won't be seen.

Anthony Wolfe asked if they could build a lean to shed.

James Wolfe stated they just need to put that fence around there. He stated he's got a little shed there and they need to put a little fence behind there in the north corner of his yard.

Mrs. Rector stated they can't put any fence up without a permit. She stated the last time they put up that lattice work all underneath the deck. She stated now all the lattice work has fallen down and all the stuff is still lying under there.

James Wolfe stated no there's no fence down anywhere.

Mrs. Rector explained it was the lattice work underneath the deck when they went to court before with his son.

President Gentry stated he thinks they made a storage shed underneath the deck and enclosed it with lattice work but the wind has blown it down. He stated he thinks the lattice is only on one side now instead of on three sides where that could have been used as blockage underneath there. He stated he doesn't know that he would want it underneath there; he'd probably want it back by the shed as well. He asked about the whirlpool tub, if stuff like that will be hauled off.

Anthony Wolfe stated yes it is on the back deck. He stated they plan on using that.

Mrs. Rector stated there is a refrigerator laying there. She stated that is what that green thing is in picture 17.

Mr. Moesner asked if the numbered pictures are all the new ones.

Mrs. Rector stated yes. She stated there are still items on the side of the house, in the back of the house and the side yard where the car is. She stated the front was picked up.

President Gentry asked when he said the car was leaving.

Anthony Wolfe stated probably on the 18th of May.

Mrs. Rector stated they had trash bags and things underneath and behind that trampoline now and that all needs to be cleaned up.

Anthony Wolfe stated that is a big tarp that he put up under there when it started raining. He stated he just went ahead and folded it up and it is stuck up under there.

Mrs. Rector stated there are trash bags and other items; she has a picture, underneath the trampoline now.

James Wolfe stated those tarps are going to be thrown away, they are from the swimming pool and they are all rotten. He stated they have already made about three loads to the dump.

Anthony Wolfe stated he has already started re-raking the yard because it needs to be cut and trimmed up again.

President Gentry asked if their intentions were still to get it to where someone is going to move back in it.

Anthony Wolfe stated yes.

Ms. Bailey asked what picture 27 is showing.

Mrs. Rector stated it is probably reflecting the inside of the house. She stated she thinks the picture got over exposed and she thinks that is the gate.

Anthony Wolfe stated if they would like to send someone out there with him that way they can show him exactly what they want done with whatever. He stated he has probably hauled 125 trash bags to the dump already.

Ms. Bailey asked if that is a whirlpool tub on the back deck.

Mrs. Rector asked the staff member to give Mr. Wolfe a set of the pictures. A set of pictures was given to the Wolfe's.

Anthony Wolfe stated they are talking about putting that tub upstairs.

Mrs. Rector stated they should go through the pictures individually and let him know what is expected. She stated in pictures 1-4 she doesn't see anything wrong.

President Gentry asked if the yellow and black lawnmower in picture 5 runs.

Anthony Wolfe stated yes it runs.

President Gentry asked if it is a tiller then back and to the left and asked if it was operable.

Anthony Wolfe stated yes, it's fixing to leave there though.

Mrs. Rector stated there's a motorcycle back there.

President Gentry stated also a push mower on either side of it. He asked if the motorcycle runs.

Anthony Wolfe stated yes.

President Gentry asked if it is plated and licensed or not.

Anthony Wolfe stated no it is not; he bought it to sell but never did sell it.

President Gentry asked if the push mowers are operable.

Anthony Wolfe stated he doesn't know; he doesn't live there. He stated they will get rid of them or do something with them.

President Gentry stated that is kind of what he is getting at, if it doesn't run it either needs to be scrapped or sold.

Mrs. Rector stated if the two lawnmowers are not running they need to go. She stated if the motorcycle is not running it needs to be running and licensed or sold. She asked the Attorney if a motorcycle is the same as an automobile.

Attorney Doll stated yes.

Mrs. Rector stated anything in that picture 5 that doesn't run or isn't licensed and running it needs to go or be put up except the riding mower that runs.

Commissioner Weisheit stated it has flat tires; it's obvious it's not been used for a while.

Anthony Wolfe stated it sat there for 2 years and they went flat.

Attorney Doll stated there's another mower in picture 6.

President Gentry asked if that one runs.

Anthony Wolfe stated yes, he thinks he's going to get that one running and sell it.

President Gentry stated basically if it isn't running get rid of it. He stated if it is running and fixable it at least needs to be gathered back closer to that shed and contained somehow. He stated the motorcycle needs to be plated or sold. He stated under the trampoline on picture 8 get rid of the tarp and the animal carrier and trash bags and the section of fence.

Anthony Wolfe stated they have been to the dump since these pictures have been taken.

President Gentry stated he doesn't know what he's got in the wagon on picture 9. He stated he is sure he is loading it up and moving it.

Anthony Wolfe stated he emptied most of that today.

Commissioner Weisheit asked if there is any water in that pool.

Anthony Wolfe stated yes.

Commissioner Weisheit stated that concerns him with the ladders up against it there. He stated he thinks the ladders need to be removed where some kid can't crawl up in that. He stated they understand the State ordinance is it needs to be fenced.

Attorney Doll stated it is an attractive nuisance.

Anthony Wolfe stated the way that yard is it is almost impossible to fence everything.

Commissioner Weisheit stated the ladders can be moved away where some small kid can't crawl up there and fall in that pool.

President Gentry stated especially with no one living there to watch the pool.

Ms. Bailey stated an attractive nuisance; she believes that's what that would be called.

Attorney Doll asked if the pool is clean or stagnant rain water.

Anthony Wolfe stated he starts running it before it is time to open it up then he gets it all cleared up and everything.

Attorney Doll asked when he thinks he is going to start chemically cleaning it because otherwise it is going to attract bugs.

Anthony Wolfe stated probably about the middle of this month.

Ms. Bailey stated most people don't open their pools until the helicopters are gone, the maple seeds.

Mrs. Rector stated it is a State regulation that any pool over 3.5 feet has to either be surrounded by a fence or have a safety cover on it. She stated the gate doesn't have a lock on it to keep anybody out of the backyard and it is a State law for that pool that it has to be fenced in and locked.

James Wolfe stated they will take care of the steps tomorrow.

Ms. Bailey stated in picture 10 and 11 there is still quite a bit of just miscellaneous items underneath the deck that need to be gotten rid of. She stated the propane tank, gas tank; if those are usable they need to be stored somewhere that is not in direct sunlight. She stated he needs to get those out of there.

Mrs. Rector asked if there is anything underneath that deck that is salvageable.

Anthony Wolfe stated it is mostly fencing.

Mrs. Rector stated the rest of the stuff needs to go that is laying there.

President Gentry stated picture 13 shows the tub that he says he's going to put in upstairs.

Anthony Wolfe stated he is going to put it up or get rid of it.

Attorney Doll stated there is more than the tub. He asked what is on top of the tub leaning against the house. He asked what is lying at the bottom of the board leaning against it.

Ms. Bailey stated that looks like a pump.

Mr. Willis stated that's the pump for the whirlpool bathtub.

Anthony Wolfe stated the wood that is piled up back by the pool they are using for a diving board.

James Wolfe stated and a deck.

President Gentry asked if both grills showed in picture 14 work.

James Wolfe stated he doesn't know if they do or not. He stated if they don't work they will get rid of them.

President Gentry stated he is not saying how many grills he can have but if they aren't working he might as well get rid of them. He stated in picture 15 there are trash cans and a refrigerator.

Attorney Doll stated there are palettes.

Anthony Wolfe stated the red trash can he's got laying on the side because when it rains it starts filling up so he laid it off to the side. He stated he puts some trash in it then dumps it into plastic bags and hauls it off.

Attorney Doll asked what about the wood pallets.

Ms. Bailey stated they can see those a little bit better in picture 17.

President Gentry stated those are floor tiles to be used. He stated in picture 17 you can see a makeshift workbench or some kind of storage thing.

Anthony Wolfe stated that is where he used to keep his trash to keep the dogs out of it.

Ms. Bailey stated she doesn't think that's functional to keep dogs out of trash anymore.

Anthony Wolfe stated it has a fence around it.

Ms. Bailey stated not from the side they are looking at in picture 17 it is open all through the middle.

Attorney Doll asked about the refrigerator.

Anthony Wolfe stated it is going to go.

Ms. Bailey stated that is not holding trash, maybe a screen a baby gate or some chicken wire fencing in picture 21.

Attorney Doll stated those are shutters.

Ms. Bailey stated if it is trash it needs to be hauled out of there and they need to keep the trash cans under there and what not.

Anthony Wolfe stated that is floor tile right there.

President Gentry stated they are talking about what is underneath the wooden structure. He stated they couldn't get a trash can under there because of the other stuff.

Anthony Wolfe stated he may have had some bags under there that they hauled off.

Ms. Bailey stated everything under there needs to be hauled off if it is not functional.

Anthony Wolfe stated they will probably be using some of that floor tile.

Ms. Bailey stated she understands floor tile but that should probably be moved in the house.

Anthony Wolfe stated they are redoing the kitchen floor and putting new carpet the rest of the way through the upstairs.

Attorney Doll stated in picture 24, it would take nothing to stack the landscape retaining wall back up but it would sure make the neighbors happy. He stated it wouldn't take more than 30 minutes. He stated that is what the neighbors have to look at every time they drive by the property.

Commissioner Weisheit stated around the light post there.

Anthony Wolfe stated those are the blocks for the landscaping.

Mr. Willis stated yes but it looks like someone's run over them and knocked them out and they need to be put back up to make the curb appeal look better.

Attorney Doll stated it would make the neighbors appreciate their effort a lot more.

Commissioner Weisheit stated it is not hard to put them back.

President Gentry stated in picture 26 again is that tarp that they said they will get rid of and there is something else under there.

Mrs. Rector stated there are trash bags but she doesn't know what that other thing is.

President Gentry stated they are like cat carriers or something.

Anthony Wolfe stated that is part of a pet taxi.

President Gentry stated then in there behind that are the trash bags.

James Wolfe stated no that is a big black tarp. He stated that was when you come back through the gate to the back of the house that was all laid out so when he started bagging everything up he used that to cover the bags so they wouldn't be as heavy when he started hauling them off.

Attorney Doll asked if that helped them understand what still needs to be done. He stated it is better but more work needs to be done.

President Gentry asked what the Board's wishes are.

Mr. Willis stated he thinks with the inclement weather that they've had this year he thinks they ought to give them until the June meeting, have the Executive Director go by on the Friday before the Monday meeting and do an inspection and take pictures.

Attorney Doll asked the Wolfe's if that is realistically enough time, they are going to Georgia etc. He stated if for some reason that is not enough time now is the time to tell the Board.

Mr. Willis stated they can always give them more time at the next meeting but he wants to see some progress being made.

Anthony Wolfe stated a couple of times they've had a truck down there and they had to pull it out of the yard.

James Wolfe stated he got stuck.

Mr. Willis stated he understands the inclement weather.

Larry Willis made a motion they give them until the June meeting to go ahead and report back and have the Executive Director do an inspection on June 10th and take pictures.

Commissioner Weisheit seconded and stated he thinks they will have to see progress monthly.

The motion carried.

Anthony Wolfe stated his nephew has already been in the hospital about 3 times.

James Wolfe stated he can't do anything. He stated he's having seizures and quits breathing and they have to give him CPR or they have to use a defibrillator.

Mrs. Rector stated they are aware they need to be at this next meeting June 13th and they will receive an agenda.

President Gentry stated they will go out and look on the 10th and see what progress has been made.

The Wolfe's left the room.

President Gentry stated for the record, picture 25 and 27 were actually pictures in the house and the double exposure is the reflection off the glass where Mrs. Rector was taking pictures in the home. He stated she is probably showing all the trash in the house. He stated that is what the inside of the house looks like. He stated they have no jurisdiction over that but it gives them a sense of what they are dealing with.

Attorney Doll asked if the stuff was coming from the outside of the house into the house.

Mrs. Rector stated a person could not move around in that house and there is no way the house is going to be cleaned up and made livable by these people.

Mr. Willis stated he would imagine it is rodent infested.

Mrs. Rector stated Aaron Franz in the Health Department visited the property and what he told her is he can condemn a house which would make it so they cannot live in the house until he comes back but they are not living there anyway so there is nothing he can do. She stated she doesn't know who could do something about it.

Attorney Doll stated it could constitute a public nuisance and if that is true this Board has jurisdiction to bring legal action if they choose to do that.

Mrs. Rector asked if they can imagine what it will be like this summer with no utilities in there and no ventilation.

Attorney Doll stated a nuisance is defined in the code.

Ms. Bailey asked who is making the complaint on this.

Mrs. Rector stated the next door neighbor and Commissioner Mosbey.

Mr. Moesner asked if the Health Department has jurisdiction for a nuisance like that.

Attorney Doll stated this Board has jurisdiction for nuisances but the Health Department has a different kind of jurisdiction, a public health jurisdiction. He stated if something causes disease or transmits unhealthy rodents.

Ms. Bailey asked if they could get them on a mosquito vector out of the pool.

Attorney Doll stated they might and he is worried about that pool. He stated obviously this Board doesn't have jurisdiction over that but an unattended swimming pool is a nightmare.

Ms. Bailey stated the definition of an attractive nuisance.

Mrs. Rector stated they just had a two year old drown in one of these in Boonville just the other day. She stated they climbed up in there through a pet door.

Commissioner Weisheit stated that is exactly why he brought it up.

ATTORNEY BUSINESS:

Complaint Agreement.

Attorney Doll stated the two complaints they have dealt with tonight are two examples. He stated they fix these problems and they get folks to clean up the properties only to see in a year or two they have to see the same property once again. He stated he had suggested to Mrs. Rector what he'd like to do with the Board's permission is to draft with Mrs. Rector, an agreement that when they do find a property, for example the Emmerson property they dealt with this evening and found them now in compliance, as part of their motion to find them now in compliance, he'd like to have a condition that they execute an agreement with the APC and Warrick County that they will not allow their property to return to its prior condition and if they do they understand they can go back to court, can do certain things directly to them if they get back into a bad condition. He stated it might shorten up the requirements in court and it might have the persuasive power of them understanding there is a consequence of letting it slip back into decay.

He stated it may not be worth the paper it is written on in persuading them to stay in compliance but he is thinking of something that he can give to Mrs. Rector in a form that they can keep on file so when they do settle one of these, whether it is settled in the office or with the Board, such an agreement is executed, everyone gets a copy and they know what is happening in the future. He stated it may have some impact. He stated if they could eliminate half of the repeat offenders that is progress in his opinion. He stated if the Board wishes, Mrs. Rector and he can get that done in the next 30 days or so. He stated it may be something they can use when they send an inspector out and gets them to act on it, he could get them to sign it saying they are now in compliance and they agree to maintain it in that condition.

Ms. Bailey asked what he meant by shortening up their legal things.

Attorney Doll stated it would cut out the burden of proof, they've been here before, they gave you a chance, they had it in compliance, they executed this contract with the County promising not to violate again and here's a picture.

Mrs. Rector stated this is the second time the Wolfe's have been here. She stated they've had another gentleman that has been here twice up by Folsomville.

President Gentry asked about Brandon Smith.

Commissioner Weisheit stated he went out there on May 3rd with Aaron Franz because there were also complaints about his raw sewage running next door. Mr. Franz did condemn the house and he has 15 days to move out or repair the field bed which will require putting a pump in. He stated what he does is pump it up to his field bed with a sump pump and it overflows and runs down the neighbor's property. He stated he towed two cars that day with Brad's towing but it was so rainy it was going to be muddy getting everything else out so he went back and talked to Brandon and Penny and explained to them what was going on and they are in the process of moving somewhere else and they were going to get Brad's Towing to move everything to another location out of the County around Pollock Ave. He stated he told Brad if he wants to move these vehicles down there that is okay, he wanted to retain those two for payment and if Brandon wanted to go ahead and hire Brad's Towing to move the rest of the stuff that was fine. He stated but as soon as it dries up they can get in there and mow. He stated the only thing the County has are the bigger tractors with the bush hogs and they will have to wait until they can get in there without cutting up and doing a lot of damage. They will take a highway crew and get it cleaned up. He stated there is still a tractor out there and a truck and an old jeep. He stated Chandler has annexed that area but the County had the court order before it was annexed.

Attorney Doll stated to keep track of the time because the County gets it; it is part of the lien.

Commissioner Weisheit stated he thinks they might wait until the 15 days where they have to be out of the house and Mr. Franz is even thinking about having the water shut off to make sure they don't use the field bed but he thinks they'll be moved out within the 15 days.

Attorney Doll stated he needs to know the day the property is cleaned up and back in compliance because it stops the fine. He stated right now it is a \$100 a day that the court has levied against this property for every day it is not in compliance.

Commissioner Weisheit stated they are still living there; they are in and out even though the house is condemned. He stated Mr. Franz said due to there being children he has to give them 15 days.

Attorney Doll stated Penny Smith is not a property owner; her name is not on the deed so every time he says that that is incorrect. He stated he is the only owner.

Commissioner Weisheit stated she was incarcerated but got out on bond the week before. He stated he doesn't know how long she will be out.

President Gentry asked if the County will eventually end up with that property.

Attorney Doll stated they will place a lien against it so when it goes to tax sale the lien will be required to be paid to get clear title to it.

Mrs. Rector stated she has asked Adam Long, the last she heard the annexation was still in court for the judge to sign.

Commissioner Weisheit stated it did get signed and released and Chandler has taken that area over.

Mrs. Rector stated it has not been recorded and Beth from Chandler keeps calling because they need the recorded annexations because they have to change all of the GIS maps, remove the addresses so Chandler can put theirs in and Attorney Long hasn't replied. She stated they called the Auditor's office today and it has not been recorded. She asked if he could find out where they are in the process and let her know. She stated they have to change everything, all of the Planning Commission's jurisdiction changes.

Attorney Doll stated he knows Anthony Long was out of the office all day Friday in mediation because he was with him.

Commissioner Weisheit stated last Monday, a week ago, at the Chandler Town Board meeting they announced that was their jurisdiction and it had kind of been in limbo the previous meetings but they officially took that over. He stated the Town Clerk gave them a copy on April 19th where it was dismissed as far as the appeal and that is all he's seen and he gave that to Robert Howard because of storm water. He stated he will see what he can find out for her.

EXECUTIVE DIRECTOR BUSINESS:

Mrs. Rector stated first thing they didn't include with the fees for Parcelizations, for Parcelizations with newly created building sites, the \$15 copy fee just like it is with minor subdivisions because they have to send them to the Post Office, the Sherriff's department etc. She stated she didn't think with the Parcelizations without building sites they don't have to send them to anybody so she doesn't want to charge them for making copies for nothing.

Attorney Doll stated that goes in the fee schedule.

President Gentry entertained a motion.

Guy Gentry made a motion to amend the fee schedule to include the \$15 copy fee for Parcelization only when newly created parcels for building sites are created.

Larry Willis seconded and the motion carried.

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Mrs. Rector stated another item she had, a few months ago she brought to the Board the issue with the Holweger property, all the different businesses on Old Boonville Highway. She stated they met with the Plat Review Committee, Attorney Doll was in attendance, they went over everything that needed to be done, the subdivision process, rezoning etc. She stated one issue they had is there is only one septic system out there, they were going to try and get that straightened out with the Health Department so they were supposed to come back and meet with the Site Review Committee in two weeks. She stated she spoke with Brent Holweger who promised he would be there and go back through everything. She stated they never showed up. She stated now they have sold a portion of parcel 1 of Wagner Minor. She stated they have illegally divided parcel 1 and the deed was recorded on the 5th of this month to Buchta Trucking. She stated these other businesses that Mr. Holweger has on his property has no actual approved commercial entrance or frontage any longer.

Attorney Doll added, or approved septic system.

Mrs. Rector continued, Robert Howard, County Engineer, is going out tomorrow to inspect and he's been told they have started to build another commercial driveway without any permit and doing work in the road right of way. She stated she spoke with Dennis Lockhart the new Building Inspector, about the building that was supposed to be just the storage building for the house with no business in it as represented by Mr. Holweger in the site review meeting. She stated that Mr. Holweger represented that it was just going to be to park some trucks in and the permit was issued for an unattached storage building. She stated Mr. Lockhart was never called for an inspection on the building; it is in the flood plain it has to be certified to etc. She stated no one has called in for any inspections for this building at all and it was given a commercial

building permit from the Building Commission for a utility shed. She stated that's what was sent to the State. She stated today Mr. Santiago Cruz comes and states he has been talking to the Building Inspector and he was told he needed to get up to the office and get his building straightened out that was built for him and his business out there on Holweger's property. She stated this bottom sheet in the Board's packets is what was turned into the State. It says it is an empty shell, shed, storage building and that is what Mr. Holweger said was being built per the builder to get their state approval. She stated their State approval has their type of building as a "U" which means utility shed. She stated Mr. Cruz stated he is a contractor for WOW! And has 18 subcontractors, he won't call them employees. She continued he has 2 or 3 offices in there, an office warehouse area, storage areas and they all come in and meet and then they are sent out to houses and they have a port-a-john out back. She stated he asks how to straighten out his permits and she doesn't know how to get him straightened out because everything is illegal out there.

President Gentry stated he thinks the Board should file an injunction to stop everything that is going on out there.

Mrs. Rector stated Mr. Lockhart is coming in in the morning and she doesn't know what all he has said to them but their State permit isn't right, their building permit isn't right, the ILP isn't right and she would like for this Board to have the attorney write Mr. Holweger a letter to come to site review, get it straightened out, do the subdivision etc.

Attorney Doll stated he doesn't think it would do any good to have him come to a meeting but he will do whatever the Board tells him to do. He stated the problem with the septic system is that this septic system is in a flood plain which requires the State of Indiana approval to exist.

Mrs. Rector stated it was only approved for Wagner's.

Attorney Doll stated when Wagner's had the fertilizer and seed business there it was approved under those parameters, how many employees etc.

Mr. Moesner asked how many acres they are talking about.

Attorney Doll stated the green area at the bottom is the mound system, the septic system. He continued then they divided the property and sold it off but everything is tied to that septic system and it is a lot more intensive use and the septic system isn't located on the property owned by the various owners now like Buchta, etc.

There was some discussion on how they split and sold the property.

Mrs. Rector stated first on May 4th Al & Brent Investments deeded off the entire 9.10 acres which is the entire parcel 1 of Wagner Minor to Terminal Properties LLC. She continued then Terminal Properties turns around and deeds the bottom half back to Al & Brent Investments.

She stated she doesn't know what to do. She stated she can't give this man a permit to get his building straightened out.

Attorney Doll stated if he had an itemization from the Planning Commission of all the known alleged violations and if it is the Board's wishes, under Article 32, they have the ability under section 2 to seek an injunction, cease and desist the illegal use or operation of the properties until they come into compliance. He stated he can put it in front of Judge Meyer and see what he says. He stated if the Board wants him to negotiate with him he will. He stated he has sat through a couple of meetings with him and it is not very productive. He stated they've already pointed all this out to him in April and in May he deeds the land away knowing they've just told him in a public meeting they are illegal and they can't do it. He stated he does it anyway so he is not optimistic he's going to have much persuasion over him but he will do whatever the Board wishes.

Mrs. Rector stated she also talked to Brent, his son, who wasn't at the meeting and Brent told her they have got to sell this piece of property. She stated she told him she can't keep him from selling anything to anybody but they are in complete violation selling the entrances off etc. She told him they were supposed to come back to the next site review and he promised he would be attending. She stated she told him if he sells off that entire piece of property, they won't have a septic system. She asked if he understood what they are doing not only to the other people but to themselves.

Attorney Doll stated Warrick County has no ability to approve the septic system because it is in a flood plain. He stated the only way that septic system could be approved is at the State level. He stated they aren't going to approve a port-a-potty for a business with 18 subcontractors.

Ms. Bailey asked how long ago that septic system was approved on that mound because all those regulations have changed.

Mrs. Rector stated it has been a while and they did let them do some amendment to it but that was for the original owner and the State did it, they weren't going to make them move out. She stated any time she says or does anything Mr. Holweger runs to the Commissioners and it is a constant every day affair.

Attorney Doll stated he thinks we are picking on him and he can represent to the Board that they are not. He stated they are just trying to follow the County ordinances and the State statutes.

Mrs. Rector stated she told Mr. Cruz they are trying to help him by these regulations, that is who we are trying to help and protect, that is why these regulations are in place because here is a man now with an office building that doesn't even have a septic system and he also bought the house and the septic from it runs back to the septic system.

President Gentry stated he shouldn't even have an office because it is not a commercially built building. He stated he thinks the State ought to be called in on that.

Mrs. Rector stated she doesn't know what Mr. Lockhart is going to do.

Attorney Doll asked which building is Mr. Cruz's building on the aerial photo.

Mrs. Rector stated it is not on the 2009 aerial – it is newly constructed.

There was discussion on locating the new building and which parcel it is on.

Mrs. Rector stated Daryl VanWinkle obtained the permit and she called him and she asked him why he pulled the permit for a storage building for that house, it was nothing commercial and he said that is what Al Holweger told him they were building and to get the permit for. She stated she told him that Mr. Cruz hadn't ever heard of him, he worked with Jimmy Volz and paid him to build this building. She stated he doesn't even own the ground, Holweger still owns the property.

Attorney Doll stated so this is a lease improvement then.

Mrs. Rector stated Mr. Holweger is going to sell him the ground, divide it out to him. She stated Mr. Van Winkle told him he subcontracted it out and she asked if he got a State permit. She stated Mr. VanWinkle stated they kind of dropped the ball, and then he remembered to. She then asked him if he got a State permit back and he stated he doesn't know because Mr. Holweger had Complete Design do it and send it to the State. She stated then they finally got copies from the State and they came in and told Complete Design that it was just a utility shed and that is what they were told by Al Holweger and that is what they got State approved plans for.

Attorney Doll asked how old this new building is.

Mrs. Rector stated the permit was just issued January of this year.

Larry Willis asked the Attorney if one of the principals is a licensed real estate agent, if there is another penalty in there by doing what they are doing.

Attorney Doll stated he can't think of it off the top of his head but even if there is it wouldn't be within their jurisdiction.

Mr. Willis stated because Brent Holweger does have a real estate license. He stated he's selling these properties that are non- conforming.

Mrs. Rector stated they are going through other title companies but she hasn't called them back because she is not going to tell a title company whether someone can close on a piece of property

or not. She stated Brent Holweger works for Buchta Trucking, they sold out the trucks and he works for them now.

Attorney Doll stated if they want court intervention and he is not advocating it but if that is what the Board wants, he would need a legal description of each of the parcels and an itemization per parcel of alleged violations and of the principal parties involved, who owns the land etc. He stated Mr. Cruz is in violation too even though he is not the land owner but he is occupying the building and it doesn't even have plumbing.

Mrs. Rector stated all of those buildings out there have got businesses and they are doing the same thing.

Attorney Doll stated it would be a multi-count complaint.

Ms. Bailey asked how he even sells off these parcels.

Attorney Doll stated he surveys them, creates a deed and sells it as a metes and bounds.

President Gentry stated he doesn't understand, they try to get something filed, they won't file it and then they file something that didn't even come from the Planning Commission.

Mrs. Rector stated the deeds were prepared by Jeffrey Bosse, Attorney at Law.

Attorney Doll stated Jeffrey Bosse Sr. owns Bosse Title. He stated his son is not a lawyer. Jeff Jr. is an MBA but not an attorney.

Mrs. Rector stated well it says Attorney at Law, Bosse Law office.

Attorney Doll stated and they own Bosse Title which means they just did the deed as part of the title search for a prospective buyer.

Commissioner Weisheit asked if they should wait for Mr. Lockhart's and Mr. Howard's inspection.

Mr. Willis stated well then they are another month down the road.

Attorney Doll stated they could do something subject to this upcoming inspection.

Ms. Bailey stated or are they just going to find more violations. She asked what Mr. Howard and Mr. Lockheart are going to do out there.

Attorney Doll stated well allegedly they are building a new commercial driveway without permits in the county road right of way.

Mr. Moesner asked if they did get a permit to build that building.

Mrs. Rector stated for an unattached storage building.

Mr. Moesner stated then they've gone inside and done stuff inside.

Mrs. Rector stated yes they've added walls and everything.

Mr. Moesner asked if they don't have to have a permit to do that.

Mrs. Rector stated yes and a State approved permit as well.

Attorney Doll stated and they are using it as a commercial building and it was not intended for that.

Mrs. Rector stated she doesn't know what authority the Building Inspector has once something is already built and someone is in it. She stated they haven't been given a certificate of occupancy. She stated he didn't even inspect anything, she doesn't know how he can be given a certificate of occupancy if they never see anything built.

Attorney Doll stated well it is not meant to be occupied, it is a storage shed.

Mrs. Rector stated she doesn't know if the Building Inspector can shut them down and make them move out, or if he has to go to court and have it ordered, she doesn't know what the statutes are for Building Inspectors.

Mrs. Writsel stated it all comes back to the septic if they can get that approved.

President Gentry stated the building itself is a separate issue to a certain degree, that is the Building Inspector's problem. He stated they didn't get an Improvement Location Permit for the right thing and then they've done some things to it so he may have some steps there but as far as the whole dividing of the property, the Site Review Committee told them what they needed to do. He stated they gave them a couple of different options and they have not followed through on any of them.

Mr. Moesner stated if there are people working in there as an office environment without any inspection of electrical that is a serious violation.

Attorney Doll stated the problem came into light because the post office showed up saying they've got no addresses, there are all these businesses out there and they have no idea what their addresses are. He stated the office's position was what businesses are out there.

Mrs. Rector stated they thought it was all Holweger.

Attorney Doll stated now Holweger has negotiated legal addresses with the United States Postal Service.

Mrs. Rector stated she had another suggestion. She stated they can look at the next month's filing deadlines for the rezoning and subdivision plats and if it is not filed by that deadline then they will be filing suit and going to court. She stated that would at least give them an opportunity.

President Gentry stated he thinks that is a good idea. He stated they have told them in Site Review now a formal letter to that affect and then follow up with that.

Guy Gentry made a motion to commence bringing this property into compliance by filing the preliminary plat by the next filing deadline and if not additional actions will be taken.

Ms. Bailey asked if this will resolve all issues.

Attorney Doll stated they are not going to be able to fix the sewage system.

Ms. Bailey asked if they are just going to waste time.

Attorney Doll stated they need to give them due process and the opportunity to try.

Mrs. Rector stated they have the right to run a sewer line to it as well. She stated it is not like they are not able to get something there.

Mr. Willis stated but the one guy that is going to get caught in the cross hairs of this is Mr. Cruz and his subcontractors and their employees.

Mrs. Rector stated and the other businesses.

President Gentry stated their only recourse is to file suit against Holweger. He stated he says they've got to progress on with it.

Mr. Moesner seconded and the motion carried.

President Gentry asked if there is a way they can suggest to the Auditor's office that they not accept deeds and things coming in if they've not been through the Planning Commission. He stated that was their big thing, Mrs. Brooks can't record it unless it has the Auditor's office stamp on there so why can they split property without coming through Area Plan.

Mrs. Rector stated the thing she can't understand is how did she figure out how much acreage was left when she got that deed for part of the property when she stood there and said they couldn't do parcelizations because they didn't have a legal for the remainder. She stated they didn't in this case but they sure divided it. She stated they also did the County's deed for the senior citizens, accepted it, put it in the plat books before they even got the parcelization recorded but they went ahead and accepted it and divided it by deed.

Attorney Doll stated he can't answer those questions but if the County Zoning Ordinance requires any recorded deed to carry a certification from the Area Plan Commission that is in compliance with the Zoning Ordinance for parcelization platting etc. they could do that but their Ordinance doesn't say that so it would take the Commissioner's amending the Ordinance to require it and that would stop deeds from being recorded that didn't comply with the County Ordinance.

Mrs. Rector stated she doesn't understand why people can't pick up a phone and say "someone's turned this deed in and they are dividing their property up." She stated it used to happen that way but it doesn't anymore. She stated she doesn't know if legally they can stop a person from recording a deed.

President Gentry stated they wanted a procedure and he thinks they ought to draft an ordinance to give them the procedure.

Attorney Doll stated if it is in the County Ordinance and it doesn't run afoul of the State statute then yes that could be a condition in Warrick County that the land has to be an approved division before the deed can be recorded.

Mrs. Rector stated they don't have the staff to review every solitary deed that goes through the Recorder's Office.

Attorney Doll stated he knows, even someone who is deeding a house away.

Mrs. Rector stated they can't do it.

Attorney Doll stated if there is a division then that would be fine.

Mrs. Writsel asked if there is a checklist where things are reviewed in each office so if the Auditor gets something that hasn't been to Area Plan they know it hasn't because it hasn't been checked off.

Mrs. Rector stated no there isn't. She stated they will have to think about something because there is no way they can check every deed.

Attorney Doll stated it is possible that on the Real Estate Disclosure Sheet one of the checks is if this is a division of land. He stated the Auditor looks at those because they keep those and if the County had an Ordinance that said in those cases where box 15a is checked in a real estate disclosure statement the division of land has to be checked to verify it is in compliance with the County Ordinance by the Area Plan Commission before the deed can be recorded. He stated that would stop this. He stated it would only be the deeds where there is a division of the land.

Mrs. Rector stated she will check into that.

Attorney Doll stated they would be piggy backing off a State form that they are already accustomed to and is being used so they would just turn to that second page, run their thumb down and say they have to go to the Planning Commission.

Commissioner Weisheit made a motion to adjourn.

Being no further business, the meeting adjourned at 7:27 p.m.

Guy Gentry, President

ATTEST: The undersigned Secretary of the Warrick County Area Plan Commission does hereby certify the above and foregoing is a full and complete record of the Minutes of said Board at their monthly meeting held May 9, 2011.

Sherri Rector, Executive Director